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DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

(Syllabi prepared by M. P. Burks, State Reporter.)

MERCHANTS BANK OF DANVILLE V. BALLOU.*—Decided at Richmond, February 8, 1899.—*Harrison, J. Keith, P.*, dissents. Absent, *Riely* and *Cardwell, JJ.*:

1. **TRUSTEE—Purchaser—Notice.** The trustee in a deed to secure creditors is a purchaser for value, and notice to him is notice to the beneficiaries.

2. **PRINCIPAL AND AGENT—Trustee and beneficiary—Acceptance—Notice—Substituted trustee.** In legal contemplation the relation of principal and agent between the trustee named in a deed and the beneficiaries under the deed begins when the transaction is completed. The acceptance of the trustee is presumed until he declines to accept the trust, and, should he decline and a successor be appointed, he takes the shoes of the original trustee, and is subject to all the rights and responsibilities of the position as if originally appointed, and the trust in his hands is tainted with all the imperfections that attached to it in the hands of the original trustee.

3. **TRUSTEE—Notice—Ignorance of deed—Declining trust.** The beneficiaries in a deed of trust are affected with notice to the trustee although he did not know of the existence of the deed or of an intention to make it until it was recorded, and then immediately declined the trust.

4. **CONSTITUTIONAL LAW—Retrospective laws—Presumption.** A statute will not be construed to have a retroactive effect unless there is something on the face of the act putting it beyond doubt that such was the purpose of the legislature.

5. **CONSTITUTIONAL LAW—Retrospective laws—Vested rights—Judgments.** The legislature has no power to disturb vested rights of property by retroactive legislation. A judgment is such a vested right of property, and the legislature cannot by retroactive legislation either destroy or diminish its value. It cannot alter its amount, nor diminish or destroy the effect theretofore given to it as a lien on real estate.

6. **CONSTITUTIONAL LAW—Defective acknowledgments of deeds—Curative act—Prior judgments.** The act approved March 1, 1894 (Acts 1893-4, page 580) in so far as it attempts to validate deeds theretofore made for the benefit of corporations which had been acknowledged before a notary public or other officer who was a stockholder in such corporation is unconstitutional and void so far as it affects the lien of judgments recovered and docketed against the grantors in such deeds prior to the approval of said act. Such acknowledgment is invalid.

RICHMOND TRACTION COMPANY V. MURPHY.—Decided at Richmond, February 8, 1900.—*Harrison, J.*:

1. **STREETS—Railways—Abutting owners—Damages—Benefits.** The occupation of a street by an electric street railway is not generally one of those burdens for

* Recently directed to be reported.

which an abutting lot owner is entitled to recover damages as compensation. Neither is the removal of such street railway a benefit to the abutting lot owners which may be set off against damages inflicted by the construction of a steam railway in front of such lots.

2. *STREETS—Railways—Abutting owners—Consequential damages.* Ordinarily the fee of the abutting lot owner extends to the center of the street, subject to the easement, and the construction and operation of a steam railway over that part of the street upon which his lot fronts is an additional burden for which the law provides compensation, but section 1093 of the Code was not intended to give an abutting owner the right to have estimated as an impairment to the value of his lot anything by reason of the location of the road beyond the limits of his premises.

3. *CONDEMNATION PROCEEDINGS—Commissioner's report—Evidence.* The report of the commissioner in condemnation proceedings, if no irregularity or illegality appears on its face, is *prima facie* evidence of the propriety and correctness of the award, and must be confirmed and carried into effect unless good cause be shown against it.

COVINGTON V. GRIFFIN'S ADM'R.—Decided at Richmond, February 15, 1900.—*Keith, P. Cardwell, J., dissents:*

1. *CHANCERY PLEADING AND PRACTICE—Order for account—Statute of limitations.* In a suit to settle the accounts of an executor and ascertain the debts against his decedent's estate, a decree for an account of debts stops the running of the statute of limitations as to all debts against the decedent.

2. *CHANCERY PLEADING AND PRACTICE—Statute of limitations—Laches.* Equity requires diligence in the prosecution as well as in the institution of suits, and, in the absence of any allegation of fraud or trust, will refuse its aid where there has been long and unexplained delay resulting in the death of parties and the probable loss of evidence.

NALLE V. FARRISH.—Decided at Richmond, February 15, 1900.—*Riely, J:*

1. *MARRIED WOMEN—Common law lands—Executory contracts.* Prior to the "Married Woman's Act" a married woman was without power to contract to sell her lands, and such contract cannot be enforced by a court of equity.

2. *SUBROGATION—Volunteers—Payment of vendor's lien—Case in judgment.* The doctrine of subrogation does not depend on the contractual relations of the parties to be affected, but is broad enough to include every instance in which one party, who is not a volunteer, pays a debt for which another is primarily liable, and which, in equity and good conscience, should be discharged by the latter. In the case in judgment, the party primarily liable was a married woman without power to contract, but the payment was of a debt which was a vendor's lien on land conveyed to her and was made by one who purchased a part of the land from one who had no authority to sell, but paid the purchase price to the holder of the lien. Under these circumstances he is entitled to be subrogated to the rights of the holder of the lien, at least to the part of the land so purchased.